

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.18 of 2015
and
M.P.No.1 of 2015

R.Idhayakumar

.. Petitioner

vs

V.V.Panchatcharam

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 20.06.2014 passed by the learned Subordinate Judge, Tiruvallur in I.A.No.443 of 2013 in O.S.No.11 of 2013.

For Petitioner : Mr.R.Karunagaran

For Respondent : Mr.M.S.Subramanian

ORDER

The defendant is the revision petitioner. The revision is filed aggrieved by the order passed by the court below in rejecting the application filed by the petitioner under Order 26 Rule 10A of the Code of Civil Procedure for appointment of an Advocate Commissioner to send the suit promissory notes for handwriting expert's opinion.

2. Heard both sides.

3. The respondent herein filed the suit for recovery of money based on the suit promissory notes. The petitioner also filed the written statement. Pending suit, the petitioner also filed I.A.No.443 of 2013 seeking to send suit promissory notes, which are marked as plaint documents 1 and 2 for the handwriting expert's opinion to compare the disputed signatures with that of the admitted signature contained in the sale deed dated 16.09.2012 by appointing an Advocate Commissioner.

4. It is the contention of the petitioner before the Court below that he neither executed the suit promissory notes dated 27.03.2007 and 03.04.2007 nor made the endorsement for its revival thereof on 25.02.2010 and 05.03.2010. It was further stated that the petitioner herein had entered only into a contract of mortgage with the respondent's son and other than that no other papers were signed by him. Accordingly, he prayed for sending the suit promissory notes to the handwriting experts for an opinion through Commission in order to prove the same.

5. Whereas the respondent had contended that the petitioner had borrowed money and also admitted his liability by signing in the suit promissory notes. Accordingly, he prayed that the suit promissory notes should not be sent out of Court for expert opinion.

6. The Court below, after perusing the materials available on record had held that the petitioner had taken out such an application when the suit is posted for framing of issues, only to drag on the proceedings. It was further held that the petitioner had neither sought for scientific investigation nor produced any admitted signatures. Accordingly, dismissed the application with costs. Hence, the revision.

7. From the perusal of the typed set of papers, it is seen that the petitioner in the affidavit filed in support of this revision, has not stated as to what are all the documents, wherein his admitted signatures are found. However, two sale deeds have been filed. It is further stated that there are mortgage deeds, in which the admitted signature of the petitioner is found, but the same was not placed on record.

8. As it is the settled principle that always the burden is on the

plaintiff to prove his case, that the burden never shifts to the other side and only the onus of proof shifts and the shifting of onus is the continuous process, the Court below could have allowed the application filed by the petitioner. However, it had dismissed the same with costs.

9. In this regard, the judgment of the Hon'ble Supreme Court reported in **2006(4)CTC 524 [Anil Rishi vs. Gurbaksh Singh]** could be usefully referred to. The relevant portion is extracted as under:

"18. There is another aspect of the matter which should be borne in mind. A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of the case. The question of onus of proof has greater force, where the question in which party is to begin. Burden of proof is used in three ways.

(i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later;

(ii) to make that of establishing a proposition as against all counter evidence; and

(iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule in Section 101 is inflexible.

In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."

10. With the aforesaid principle in mind, though the initial burden is on the respondent/plaintiff to prove his case, by way of giving an opportunity to the petitioner/defendant as he denies his liability, this Court is inclined to allow the application filed by the petitioner/defendant under Order 26 Rule 10-A of the Code of Civil Procedure.

11. Accordingly, the order dated 20.06.2014 passed by the learned Subordinate Judge, Tiruvallur in I.A.No.443 of 2013 in O.S.No.11 of 2013 is set aside. While setting aside the order, it is made clear that the petitioner shall produce those documents wherein his admitted signatures are found for comparison with the disputed signatures and that they should be received in evidence first, and then only the same has to be sent to the handwriting expert for getting

opinion.

12. With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

18.01.2017

vj2

Index: yes/No

Internet: yes

To

The Subordinate Judge, Tiruvallur

PUSHPA SATHYANARAYANA,J.,

vj2

CRP PD No.18 of 2015

18.01.2017